

CHAPTER 20.91A

USE PERMITS IN RESIDENTIAL DISTRICTS

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20.91A.010 Purpose

The purpose of this Chapter is as follows:

- A. To promote the public health, safety, and welfare and to implement the goals and policies of the Newport Beach General Plan by ensuring that conditional uses in residential neighborhoods do not change the character of such neighborhoods as primarily residential communities.
- B. To protect and implement the recovery and residential integration of the disabled, including those receiving treatment and counseling in connection with dependency recovery. In doing so, the City seeks to avoid the overconcentration of residential care facilities so that such facilities are reasonably dispersed throughout the community and are not congregated or overconcentrated in any particular area so as to institutionalize that area.

20.91A.020 Use Permits To Continue Nonconforming Use

Any person whose use of property in a residential district has been rendered nonconforming by passage of the Ordinance adding this Chapter 20.91A may seek the issuance of a conditional use permit to continue the use so long as the application for that permit is completed and filed within ninety (90) days following the effective date of that Ordinance. If any such person fails to file such an application for a conditional use permit within said ninety (90) day period, such a permit to continue the use may not be sought or issued.

20.91A.030 Application Contents

In addition to the application requirements contained in Chapter 20.90, an application for a use permit in a Residential District (Chapter 20.10), or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, shall contain the following information:

- A. Facility Users. Number and types of users of the facility (including staff, clients, visitors, students, etc., as appropriate).
- B. Characteristics of Proposed Use. Hours of operation, types of activities, and typical attendance at activities.
- C. Transportation and Parking. Expected parking demand and vehicular use; availability of public transportation or other means to transport facility users; if applicable, routes utilized to transport facility users off-site.
- D. Location Map. A location map showing all conditional uses within three blocks, including property addresses and a site plan showing uses and structures on adjacent parcels.
- E. Similar Uses. A list of other uses of the same type located in the City and the authorized capacity of such use, if any, as determined by a third party entity. The applicant shall provide evidence of the need for such use by the residents of the City based on published sources. The city may complete an independent review of this data, at the applicant's expense, to determine whether there is a need for such use by its residents.
- F. Applicant Information. The name and address of the applicant, including the name and address of the lessee, if the property is to be leased and is someone other than the applicant; and the name and address of the owner of the property for which a use permit is requested. If the applicant and/or lessee or owner is a partnership, corporation, firm or association, then the applicant/lessee shall provide the additional names and addresses as follows and such persons shall also sign the application: (i) every general partner of the partnership; (ii) every owner with a controlling interest in the corporation; or (iii) the person designated by the officers of a corporation as set forth in a resolution of the corporation that is be designated as the permit holder for the use permit.
- G. License and Permit History. The license and permit history of the applicant(s), including whether such applicant(s), in previously operating a similar use in this or another city, county or state under license and/or permit has had such license and/or permit revoked or suspended, and the reason therefore.
- H. Similar Facilities. A list of addresses of all facilities similar to that for which a use permit is requested in the State of California owned or operated by the applicant(s) within the past five (5) years and whether such facilities have been found by state or local authorities to be operating in violation of state or local law.
- I. Operations and Management Plan. An operations and management plan to ensure compliance with state and local law. If the use permit is for a residential facility or a commercial facility that accommodates overnight stays, the operations and

management plan shall also indicate the number of persons per bedroom, maximum number of occupants, typical length of stay, any guest or client rules of conduct and procedures for the disposal, if any, of medical waste.

20.91A.040 Approval, Modification or Revocation of Use Permit

A Hearing Officer, as defined in Section 20.03.030, is hereby designated to approve, conditionally approve or disapprove applications for use permits, and the modification or revocation thereof, in accordance with the procedures set forth in Chapter 20.91. Decisions of the Hearing Officer may be appealed to the City Council. Notwithstanding Section 20.95.060, the standard of review shall not be de novo and the City Council shall determine whether the findings made by the Hearing Officer are supported by substantial evidence presented during the evidentiary hearing. The City Council acting as the appellate body may sustain, reverse or modify the decision of the Hearing Officer or remand the matter for further consideration, which remand shall include either specific issues to be considered or a direction for a de novo hearing.

20.91A.050 Development and Operational Standards

The following standards are applicable to uses granted a use permit under this Chapter.

- A. No staff, clients, guests, or any other users of the facility may smoke in an area from which the second hand smoke may be detected on any parcel other than the parcel upon which the facility is located.
- B. Management and Operation. The property shall be operated in compliance with applicable state and local law and in conformance with the management and operating plan and rules of conduct submitted as part of the application for a use permit or as set forth in the conditions of approval for a use permit. Each such plan shall provide a phone number by which the operator may be contacted at all times. If applicable, the permittee shall comply with the business license provisions of Title 5 of this Code.
- C. In order to ensure that unlicensed residential care facilities (small or general) are operating in a manner that is consistent with state and federal law and established industry standards and to ensure that operators do not have a pattern or practice of operating similar facilities in violation of state or local law, the standards listed below shall apply:
 - 1. If the facility is not be required to be licensed by the State of California, owners, managers, operators, and residents shall not provide any services onsite, which would require licensure of the facility under California law.
 - 2. There shall be no more than two residents per bedroom plus one additional

resident. Notwithstanding, upon request by the applicant for additional occupancy, the hearing officer has discretion to set occupancy limits based upon the evidence provided by the applicant that additional occupancy is appropriate at the site. In determining whether to set a different occupancy limit, the Hearing Officer shall consider the characteristics of the structure, whether there will be an impact on traffic and parking and whether the public health, safety, peace, comfort, or welfare of persons residing in the facility or adjacent to the facility will be impacted.

3. If certification specific to the type of facility is available from a governmental agency or qualified nonprofit organization, the facility shall receive such certification including, without limitation, certification by Orange County under its Adult Alcohol and Drug Sober Living Facilities Certification Program.
4. The names of all persons and entities with an ownership or leasehold interest in the facility, or who will participate in operation of the facility, shall be disclosed in writing to the City, and such persons and entities shall not have a demonstrated pattern or practice of operating similar facilities in or out of the City of Newport Beach in violation of state or local law.
5. The operator of the residential facility shall provide a list of the addresses of all similar facilities in the State of California owned or operated by the operator within the past five (5) years and shall certify under penalty of perjury that none of such facilities have been found by state or local authorities to be operating in violation of state or local law. The Planning Director shall verify such information.

20.91A.060 Findings

In addition to the findings required by Section 20.91.035, the Hearing Officer shall make the following findings before approving or conditionally approving an application for a use permit in a Residential District (Chapter 20.10) or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts:

- A. The use conforms to all applicable provisions of Section 20.91A.050.
- B. The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.
- C. The property and existing structures are physically suited to accommodate the use.
- D. The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the

residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer and/or City Council shall consider, as appropriate, the following factors:

1. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use ;
 2. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona Del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and
 3. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner which eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.
- E. The operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.
- F. Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.
- G. Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.

In approving or conditionally approving an application for a use permit, the Hearing Officer may impose conditions which are suitable to assure compatibility of the proposed use with all other uses in the vicinity.